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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,264	10/09/2001	Robert Marc Zeidman		3915
7590	09/08/2005			
Robert M. Zeidman 15565 Swiss Creek Lane Cupertino, CA 95014-5452			EXAMINER HAQ, NAEEM U	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/972,264

Applicant(s)

ZEIDMAN, ROBERT MARC

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/9/2001.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I (claims 1-6) in the reply filed on July 20, 2005 is acknowledged. The traversal is on the ground(s) that the restriction is improper because it does not satisfy the requirements set forth in MPEP 808.02. This is not found persuasive because the search required for one group is not required for the other groups as noted in the previous Office Action. The requirement is still deemed proper and is therefore made FINAL. Claims 1-11 are pending. Claims 1-6 will be considered for examination based on Applicant's election. Claims 7-11 have been withdrawn from consideration based on Applicant's election.

### ***Pro se Applicant***

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent

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Roster.” Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

### ***Drawings***

Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Applicant's Figure 1 shows a client server arrangement via the Internet. This is old and well known in the art as evidenced by Figure 1 (items “250” and “275”) of Fisher et al. (US Patent 5,835,896). Also see col. 7, lines 24-32. Applicant's Figure 2 shows three servers connected to the Internet. US Patent 5,815,663 to Uomini discloses a similar arrangement of server (see Figure 1, items “22(1)”, “22(2)”, and “22(n)”) Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Patent 6,484,176 B1) to Sealand et al. (hereafter referred to as Sealand) in view of Ramakrishnan et al. "Database Management Systems" (hereafter referred to as Ramakrishnan).**

Referring to claim 1: Sealand discloses an apparatus for allowing a seller of items to gather data from a server in order to optimize the sale of similar items, comprising: a server computer connected to the Internet (Figure 1A, items "12" and "23"; col. 4, lines 16-31, lines 58-60); a database on the server computer for storing data about items that have previously been sold (Figure 1A, item "14"; col. 1, lines 34-43; col. 3, lines 14-17; col. 4, lines 16-31); application software for allowing a user to request information from the database about previous sales of items similar to the one that the seller has for sale (Figure 1A, item "13"; col. 1, lines 34-43, line 64 – col. 2, line 12; col. 4, lines 16-31; col. 6, line 63 – col. 7, line 7). Sealand does not disclose database management software for maintaining said database. However, Ramakrishnan discloses the advantages of using database management software for managing data in a database (pages 3, 4, 8, and 9). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to

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incorporate database management software in the invention of Sealand. One of ordinary skill in the art would have been motivated to do so in order to obtain the benefits described by Ramakrishnan such as data independence, data integrity and security, and crash recovery. The cited prior art does not disclose an e-commerce website, or a website server. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited apparatus. Therefore these limitations are deemed to be nonfunctional descriptive material. The elements of the apparatus would be the same regardless of what type of server or website were used. The difference between the Applicant's invention and the cited prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a website server and an e-commerce website in the invention of the cited prior art because such information does not functionally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 4: The cited prior art teaches or renders obvious all of the limitations of claim 1 as noted above. Furthermore, Sealand discloses a TCP/IP connection software for enabling the application software to communicate over the Internet with a seller at a remote computer (col. 2, lines 3-6; col. 4, lines 60-63).

**Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Patent 6,484,176 B1) to Sealand et al. (hereafter referred to as Sealand) in view of Ramakrishnan et al. "Database Management Systems" (hereafter referred to as Ramakrishnan) and further in view of Searcher et al. "Intelligent agents: A primer" (hereafter referred to as Searcher).**

Referring to claims 2 and 3: The cited prior art teaches or renders obvious all of the limitations of claim 1 as noted above. The cited prior art does not teach agent software that, at regular intervals, searches various websites to obtain data on sales about various items, or agent software that, at times determined by a seller, searches various websites to obtain data about sales of various items. However, Searcher discloses intelligent agents (i.e. agent software) for searching various websites to obtain data for commercial transactions (page 15, lines 19-22) based on user-specified or agent-specified rules (page 5, lines 23-27). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Searcher into the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to automate the searching process and make the digital world less overwhelming, as taught by Searcher (page 1; page 3, lines 15-21).

**Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Patent 6,484,176 B1) to Sealand et al. (hereafter referred to as Sealand) in view of Ramakrishnan et al. "Database Management Systems" (hereafter referred to as Ramakrishnan) and further in view of Searcher et al. "Intelligent agents: A primer" (hereafter referred to as Searcher) and Official Notice.**

Referring to claims 5 and 6: The cited prior art teaches or renders obvious all of the limitations of claims 2 and 3 as noted above. The cited prior art does not expressly disclose establishing a TCP/IP connection for enabling the agent software to communicate over the Internet with an e-commerce website. However, Official Notice is taken that it is old and well known in the art to establish a TCP/IP connection for providing Internet connectivity for any software. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a TCP/IP connection for the agent software in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the agent software to communicate over the Internet.

### ***Conclusion***

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.



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#### CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

#### CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)\_\_\_\_-\_\_\_\_on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted.

For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

**NOTICE TO APPLICANT:**

In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on (571)-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Naeem Haq', with a stylized, flowing script.

**Naeem Haq**, Patent Examiner  
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September 5, 2005